



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, THURSDAY, NOVEMBER 14, 2002

No. 147—Part II

Senate

HOMELAND SECURITY ACT OF 2002—Continued

Mr. BYRD [continuing]. We have done the same thing right here. This was concocted in secrecy in the darkness of the night. It didn't see the light of day until yesterday—484 pages. We are expected to pass this. We are expected to invoke cloture on it tomorrow and pass it and tell the American people they are safer after the passage of that monstrosity.

No doubt there are some good things about that bill. There are some good things in it. Some of the provisions in this 484-page bill have come out of Senator LIEBERMAN's committee's deliberations, and it passed. Some of these have been discussed before, but not all of them. There are a lot of provisions

in this bill that had not seen the light of day until yesterday.

The press has been kept in the dark. The press is going to realize all too late what has happened to the people's right to know that we were going to pass right here in this bill. I am going to address those provisions briefly in a few minutes. I hope the press will stay tuned because I want to point out to the press what is about to happen to the people's right to know.

I have often had my differences with reporters, but I am a firm believer in the freedom of the press and in the responsibilities of the fourth estate. If the Congress is going to so willingly blindfold itself to the inner workings of this administration and this new bureaucracy, I hope the press will not be

so compliant. Hear me, those in the fourth estate. You stay tuned. I will point out part of this bill in a few minutes. But if you haven't read it as yet, it is going to turn your stomach because you believe in the people's right to know. I hope it will keep a watchful eye. I am talking about the media. I hope the media will keep a watchful eye on this new agency. Unfortunately, provisions contained in this bill will make it harder for the fourth estate—harder for you in the press—and harder for the people to do so.

I still find it difficult to believe that the American war on terrorism hinges on the building of a new, huge bureaucracy. Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government.

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MARK DAYTON, *Chairman*.

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I have read much about Senator BYRD and whether or not he would filibuster this bill. If I thought for a moment I could kill this bill here tonight by filibustering it, I would do it. But there are a lot of Senators here who wouldn't know a filibuster—a lot of people who wouldn't know a filibuster—if they met one on the way home. There are a lot of people who wouldn't know it if they met it in the middle of the road.

I intend to stand on my feet and try to expose some of the things in this bill that are not going to be good for the American people and which will not contribute to their safety.

Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government. This is a massive reorganization. This is our battle plan—talking about the administration. This is its priority. This is our ammunition against the terrorist threat to our homeland.

A certain Senator here a few days ago talked about killing snakes. He talked about snakes in his State. He knew snakes when he saw them. Well, there are some snakes in West Virginia too. I knew about those snakes when I walked the red clay hills of southern West Virginia in Mercer County. We had copperheads back in those hills in those days and a few rattlesnakes. There are snakes. I know a snake when I see it. I saw a snake in this bill. This bill is a snake. If I could chop off its head, kill it dead, dead, dead, I would do it.

This 484 pages right here is what I am talking about. This is our initiative—this is the administration's ammunition. They know better than that. They know that is not going to make this homeland one whit safer.

I have listened very hard. I do not hear the American people clamoring for us to build a new, cumbersome, bureaucratic leviathan.

The midterm elections—despite what many of the pundits may believe—had little to do with the creation of this new Department. The American people weren't clamoring for this new bureaucracy. While Americans cast their ballots, they may have had hopes for safer communities than protection from terrorism, but I sincerely doubt that they were voting to create a huge, new bureaucracy.

Surely nobody believes that building a giant bureaucracy has suddenly become the nemesis to the threat of the acts of madmen on our people here at home.

With a battle plan such as the Bush administration is proposing, instead of crossing the Delaware River to capture the Hessian soldiers on Christmas Day, George Washington would have stayed on his side of the river and built a bureaucracy.

During the Civil War, President Lincoln would dismiss one general after another until he found one capable of building a better bureaucracy.

Perhaps what we are lacking to make this new idea really resonate with the

American people is a powerful, stimulating slogan—a dramatic slogan such as the kind of slogan that we politicians slap on bumper stickers, one that would serve to inspire and unite our soldiers and our citizens.

Maybe we could draw from history to see how our new lust for a huge bureaucracy would fair.

I can picture Nathan Hale saying: I regret that I have but one bureaucracy to lose. I regret that I have but one life to give for my bureaucracy.

I can hear Captain John Paul Jones on September—I believe it was September 23, 1779—shouting: I have not yet begun to fight for my bureaucracy.

I can think of Commodore Oliver Perry hoisting his famous flag upon his ship with the motto: Don't give up the bureaucracy.

I can just imagine Commodore Stephen Decatur returning from the war on the Barbary Coast, offering his famous toast: My bureaucracy, right or wrong.

It just gives me chills to think of the people of Texas remembering the Alamo and being inspired to fight with the restoring battle cry: Remember the bureaucracy.

What about the professorial President Woodrow Wilson taking us into World War I with the proclamation: The world must be made safe for bureaucracy.

I was born during his administration. Nonsense, of course. But it has been said that necessity is the mother of invention. I guess then that political expediency has now become the mother of bureaucracy.

I don't think there is much doubt that the Senate will pass this legislation to restructure our homeland defense agencies. But my point is that the administration's plan is a sham. It is a sham. It is a political ploy. It worked well during the campaign. It was worked up in haste and for the wrong reasons.

Homeland security is a serious and dangerous matter involving the lives and the livelihoods of millions of Americans. We ought to be ashamed of ourselves to offer our people a quick bureaucratic pacifier instead of taking our time and working thoughtfully and carefully on an effective and lasting plan for the protection of the American people.

What we ought to be even more ashamed of, however, is the manner in which we are passing this bill. Prior to our recessing, hundreds of amendments were filed to make changes to the pending bill that had been reported by the Governmental Affairs Committee.

There were hundreds of amendments up at that desk. Yet Senators are choosing not to call up amendments. We are told that any amendments to this bill would force a conference with the House.

Now, get this. We are told that if we amend this bill, it will force a conference with the House of Representatives and could delay or even kill this

bill. So Senators are being urged not to call up their amendments. And in many instances, they are choosing not to call up their amendments.

Is the Senate afraid of its own shadow? Are we afraid to think, to debate, to ask questions, to stand for something? Are we afraid to stand for something? Are we afraid to stand against a President of the United States? Is the Senate afraid to stand up against an administration, a political administration? Is the Senate afraid? Are Senators afraid to stand up against the President, to be the loyal opposition at this time of great distress?

It is a dangerous thing when a President believes that he is so right that he should be given any and all powers he deems necessary to achieve his ends. That is a dangerous thing. It is dangerous when a President believes that he possesses the people's consent to freely tamper with their rights and their liberties.

But it is considerably more dangerous when the elected officials such as ourselves, whose duty it is to protect the people's liberties against the excesses of an overreaching Executive, an overreaching White House, accede to a President's every request. Shame on us. Shame on us.

And it is even worse when we not only fail to impose restraint but actually aid and abet the Executive in a brazen power grab. That is exactly what this is.

The American people feel unsettled. They are nervous. They are jittery. They are scared. And they have every right to be. Their President has spent months and loads of taxpayers' dollars frightening them. Their Government has issued an unceasing proliferation of warnings about potential violence.

But the threats to our homeland go well beyond terrorist attacks. Our Nation is threatened, perhaps most seriously threatened, by a mentality that says that Presidents should have a free hand to do whatever they deem necessary whenever they deem to do it as necessary.

Our President has been speaking a great deal in recent months about our enemies and how they hate our freedoms. Mr. President, I doubt that they hate our freedoms. They hate our arrogance. They do not hate our freedoms. They hate our arrogance.

Our President has made protecting our freedoms a rallying cry. I have been working at protecting our freedoms for 50 years in this Congress. Fifty years come January 3 I have been working at protecting our freedoms. I have been helping to appropriate the moneys for our men and our women who serve in our military services.

The President has touched a raw nerve with the public, in speech after speech after speech about foreign terrorists who are attacking their liberties, and yet, in many ways, it is this President's proposals that are the most serious threats to the liberties of Americans.

We should be standing up and fighting for what is right in this legislation. That is the place to start to fight. That is where we start to fight to protect this land of ours, these people of ours, its institutions, the institutions of our country.

We should be standing up and fighting for what is right in this legislation. We talk about justice. Justice is fine. But what is right? We should be debating, offering amendments, and telling the American people like it is. We should be honest enough to admit that this new Department is a massive undertaking that is far more likely to provide political security for its proponents than to provide domestic security for the American people out there, at least for the foreseeable future.

I do not believe this is a time for us or for the American people to cower in a corner. I do not believe this is a time for the elected representatives of the American people to run like whipped dogs. This is a time for us to seize the power that was established for us by the courageous Founders of our Nation.

Mr. President, were it not for this Constitution, which I hold in my hand, you would not be presiding over this body at this moment. I say that to every Senator who sits in this body. And I say that for the people on the staffs of Senators. You would not be here. You would not be here, I would not be here were it not for this Constitution and for the great compromise—talk about a compromise—the great compromise which was entered into on July 16, 1787, out of which came this Senate, and the equality of votes of every State that is represented in this body.

This is not a time to be voiceless. This is not a time to be silent. This is not a time to vote for cloture and to hurry away home. This is not a time to give in and to give up on the ideals that led to the creation of our country.

Far too many Americans failed to go to the polls on election day and vote—far too many. I spoke of Nathan Hale, who said: “I only regret that I have but one life to lose for my country.” And how many Americans did not even walk around the corner to cast a vote? They did not give one vote for their country. Far too many felt that the outcome of the election was beyond their control, that their votes would make no difference.

Today, I see far too many Members in this Senate falling into the same desultory way of thinking. Our votes matter, if we have the guts to make them matter. But, no, we are going to tuck our tails between our legs and run like whipped dogs and vote for cloture and go home. That is not right.

The American people have a right to know what is in these 484 pages. My constituents have a right to know. Your constituents, Mr. President, have a right to know. The constituents of every Senator on both sides of the aisle have a right to know what is in this bill.

We Senators have a right to know what is in this bill. We Senators ought to insist that we not invoke cloture on tomorrow but that we wait. Invoking cloture is all right down the road somewhere, maybe a week from now, but we ought to take the time to study this bill. Our staffs ought to know what is in this bill. We ought to know what is in this bill before we cast our votes.

Yes, I admit the handwriting on the wall is all too obvious. But I will do what is right in my frail way of thinking and seeing things. I will vote against this bill, unless it is amended—unless it is amended.

(Mr. CORZINE assumed the Chair.)

Mr. BYRD. I will probably vote against it, anyhow, because we are being pressured into voting for something that has not had a committee hearing, not a single hearing, 484 pages. There has not been a single hearing on this bill. There have been no witnesses called to testify in support of this bill. There have been no witnesses who have had an opportunity to stand before a committee and oppose this bill.

That is no way to legislate. Yet we are going to pass one of the most far-reaching pieces of legislation that we have passed in my 50 years in Congress.

It will provide for a massive shift of power. To whom? To the President of the United States. If he were a Democrat, I would oppose this just as vociferously, just as strongly, just as bitterly as I oppose this piece of legislation right here. I don't oppose it because we have a Republican President. I am going to oppose it because it gives away the powers of the people. It provides for a massive shift of power to the executive branch. It upsets that delicate balance of power the Framers provided to the American people over 200 years ago.

The popularity of a President is a fleeting thing, a fleeting thing. Our duty to our Nation is not.

One serious problem with the legislation before the Senate is the expanded authority it gives to the executive branch to conduct its actions in secret. Here is where I hope the press, the fourth estate, will pay close attention.

I have great respect for a free press. I have not always been happy with what the free press has written about me, but in my 50 years, I think overall the press has been very fair to me. I have no complaints. Some of the things the press has said that I didn't like I deserved. I am for a free press.

One serious problem with the legislation currently before the Senate is the expanded authority that this legislation gives to the executive branch to conduct its actions in secret, protected from the oversight, protected from the scrutiny of the Congress, the media, and the American people.

An example of this expanded secrecy that has been added in this new bill can be found in the exemptions that it provides from the Federal Advisory Committee Act. This is section 871 of the new substitute that we have just been

given, the substitute that fell like manna from heaven. But this didn't come from heaven, I can assure you. It fell into our laps about 48 hours ago without any warning, and we are asked to invoke cloture on this thing tomorrow.

Let me say that again. An example of this expanded secrecy that has been added in this new bill can be found in the exemptions it provides from the Federal Advisory Committee Act. Section 871 of this new substitute we have just been given provides the Secretary of Homeland Security blanket authority—get that, blanket authority—to exempt all advisory committees in the Department from existing public disclosure rules.

That is pretty serious. This provision was not included in Senator LIEBERMAN's substitute, but it has been slipped into this new bill which was made available to us, as I said, late Tuesday night of this week. I am told it was 5 in the morning. It appeared on the web site of the House Rules Committee, I believe, the night before, Tuesday night. It was made available to us just within these last 48 hours with the hope that Senators will not have enough time to scrutinize this dramatic change to an existing statute.

The statute I am talking about here, the Federal Advisory Committee Act, applies to the ad hoc committees that are often used in the executive branch to formulate policy. This statute, the Federal Advisory Committee Act, which has been on the books for 30 years now, requires the advice provided by these advisory committees is objective and accessible to the public.

The purpose of making this information available to the public is to allow the Congress, the media, and groups outside of Government to know how the executive branch is making important policy decisions. The role of this oversight and scrutiny from the public and a free press is central to upholding the principles of our government, of our constitutional system. It ensures that the people—the people—will be the ultimate judges of the wisdom of the policies of the Federal Government.

I understand this new Homeland Security Department will be wrestling with many issues of national security that should not be subjected to public disclosure rules. Sometimes these advisory committees will be dealing with classified intelligence information or with sensitive security policy, and making this information available to the public might compromise national security and the fight against terrorism. I understand that. But that is exactly why existing law allows the President of the United States, be he a Democrat or a Republican, to waive these public disclosure rules for any advisory committee for national security reasons.

The President can do that on a case-by-case basis in the current law. So the President has this authority today. He

will have it tomorrow. And he will be able to use it to protect any advisory committee in the Homeland Security Department from having to disclose information when national security information is involved. But he will be accountable for that. He will be responsible for that.

So why do we see an expansion of this authority given to the Secretary in this bill? Why do we see an expansion of this authority given to the Secretary of the Department of Homeland Security in this bill?

Advisory committees can already be exempted from public disclosure rules for national security reasons by the President on a case-by-case basis. So why does this bill, then, allow the Secretary of Homeland Security to exempt any committee, regardless of whether national security is pertinent?

Why is it in there? Why do we see this new blanket authority in this bill? I will tell you why. It is because this administration wants to shield itself from any scrutiny of the public. This administration has made it very clear that it does not want anyone meddling in executive branch decisions—not the Congress, not the media, not the American public.

Since the first day this administration took office, all we have seen is a concerted effort to prevent outside criticism of its policies and conduct. The White House has refused to share information or cooperate with the Congress at every turn—maybe not at every turn, but at all too many turns.

The Vice President has refused to release documents concerning a secret energy working group, even after court orders demanding that he do so. We have read in the newspapers that the Attorney General is trying to expand the powers of the Justice Department to operate in secret, appealing another court decision that rejected his new secrecy rule. Even Tom Ridge, the President's top man in the war on terrorism, refused to testify before Congress about the steps that the administration was taking to protect the American people.

With the President's support, top officials in this administration have stonewalled Congress—stonewalled the Congress. Tom Ridge stonewalled the Appropriations Committee of the U.S. Senate. I know; I am the chairman of that committee. Invitation after invitation was extended by my colleague, Senator STEVENS, and myself for him to appear before the Appropriations Committee to testify. The answer was no. With the President's support, top officials in the administration have stonewalled Congress, stonewalled the media, and they have stonewalled the American public. Now they are hoping to expand their ability to operate in secret, to allow even less public scrutiny. There it is. It is in the bill.

The provisions in the bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such

secrecy is necessary in any particular instance. This unnecessary new blanket authority will give the President carte blanche to expand the culture of secrecy that now permeates this White House.

This substitute language that we have just been given also provides the same blanket exemption from disclosure rules for the Justice Department's new Office of Science and Technology. This new exemption will allow John Ashcroft, the Attorney General, to conduct even more of his duties in secret, even after the courts and the press have recently rebuked the Justice Department for secrecy abuses. This Senate is being asked to authorize the Attorney General to cloak even more of the Justice Department's activities in secrecy.

I am worried that exempting this new Science and Technology Office will allow the Justice Department to provide special treatment for corporate campaign contributors who are pushing new technologies.

Let me say that again. I am worried that exempting this new Science and Technology Office will allow the Justice Department to provide special treatment for corporate campaign contributors who are pushing new technologies. These exemptions are unnecessary and they are a danger to our people's liberty.

I believe that I have a duty to the people I represent to do what I can to improve this legislation. So I hope to offer an amendment to strike these exemptions from the bill. I will do whatever I can do to improve the legislation and keep the people and the press from being locked out of the process. The people have a right to know.

I am not among those who are willing to let this Senate be beaten into rubber stamping the language sent to us by the House. It is our job as legislators to see that the Senate protects the interests of the people who sent us here and who will foot the bill for this behemoth department.

The public disclosure exemptions in this bill are a license for abuse. I do not believe that they are worthy of the Senate's approval. So I am doing everything I can to see that this Senate does not roll over at the command of any President—whether he is a Democrat or a Republican or an Independent—when there are dangerous provisions remaining in this bill that ought not be put into law.

These issues are too fundamental to let slide with the vain hope that we will get a chance to revisit them next year. Don't forget, it is easier to pass a law than it is to repeal that law. We only need a majority in each body to pass a law and have the President sign it. Once that law is on the books, in order to repeal it, a President can veto the repeal. And, then, if only one-third plus one in either body uphold that President's veto, that is the end of it. There won't be any repeal.

The Senate must act, and act responsibly, and we ought not to be in all that hurry to pass this legislation.

Having been up until almost 2 o'clock this morning, I am tired. I want to speak a little longer. I won't be able to speak tomorrow. The Senate is going to vote on cloture in the morning. And as I wet my finger and hold it to the wind, I sense that the pressure is going to be on tomorrow to invoke cloture on this bill.

Here it is, 484 pages. It has only seen the light of 2 days—yesterday and today. It has not been before a committee; there has not been a single hearing on this bill; not a single witness has appeared before any committee in support of this 484-page bill. I doubt that any Senator in this body knows everything there is to know about this bill. I do believe that the great majority of Senators know very little about this bill, and what little most Senators know about this bill comes about as a result of some of the provisions in the bill that have been lifted out of the legislation that was reported out of Senator LIEBERMAN's committee when the bill was reported earlier this year.

Mr. President, the pressure is on. We are going to be asked to vote for cloture tomorrow. I will be surprised if the Senate does not vote for cloture. But I appeal to Senators on both sides of the aisle not to vote for cloture. Nathan Hale regretted that he had but one life to lose for his country. I hope Senators will take the same view about their responsibilities to the people.

They have a responsibility to stay until they know what is in this bill, and not to invoke cloture on it until they know what is in it, until their staffs know what is in it, and until they, Senators, have had an opportunity to offer amendments to make corrections in the bill.

I daresay many Senators will find provisions in this bill they have not seen in any bill before, that are new to this bill, that are new to the Senate, and that they, those Senators, dislike. They have a duty to their constituents. I do not have to tell other Senators what their duties are to their constituents. They have the same duties to their constituents that I have to my constituents. But I have a duty to my constituents not to roll over and play dead, not to roll over and appear to be oblivious to what is in the bill, just pass it and go home and say: We have passed a bill creating the Department of Homeland Security. Whoopee. This will make us all safer.

This will not make us one whit, not one tiny whit safer.

That bill, if it passed tomorrow, would not be implemented for another year. It will take another 12 months before it is implemented. The same people who will be out there protecting the homes of the American people a year from today, if they are out there a year from today, will be out there tomorrow. They are out there tonight.

They are out there on the borders—the northern border, the southern border—the Atlantic coastline, the Pacific coastline, the gulf coastline, the ports of this country, the ports of entry.

They are out there tonight protecting the airports. They are protecting the ports of entry all over this country. They are protecting the nuclear facilities, the nuclear plants. They are standing at their stations in the law enforcement agencies. They are standing at their stations in the fire departments. They are standing at their stations in the health departments. They are out there now. They are out there tonight. When I go home to sleep tonight and pray the Lord my soul to keep, they will be out there. I will be asleep; they will be there.

This bill is not what is putting them there. They are already there, and they are being put there by the taxpayers' money that flows through the Appropriations Committee in this Senate. So they are there. Do not think for a moment that this country has to have this bill creating this massive bureaucracy in which there will be at least 28 agencies that will be crammed into a new Department—170,000 people employed.

May I say to the people sitting back here on the benches—I am talking to these staff people right back here—pay attention here—170,000 people employed in this new agency. They are not employed by virtue of these 484 pages in this bill.

The Senate apparently is on a path to rush to consider this legislation, and we can all say: Whoopee, let's go home now. We have created a Department of Homeland Security. Everybody is safer now.

But don't you believe it.

The Senate's legislative counsel did not finish drafting this behemoth bill until the wee hours of yesterday morning, and now Senators are being pressured to pass it without question and without comment. What a shabby way to treat the security and safety of the American people, those people who are looking right at us through those electronic lenses.

As I have said all along, this new Department likely will take many years to become effective. We should not simply put a new name on a hodgepodge of agencies and claim that the Nation is, ipso facto, instantly safer. What a sham. What a sham. A lot of Senators who vote for this are going to come to realize that when it is too late to change their votes. What a sham. Yet this legislation is being bull-rushed through Congress and is being hailed as the great homeland security panacea.

This new bill is 484 pages long. Here it is. I have not weighed it, but it weighs as heavy as 484 pages. Yet we will not be one whit closer to homeland security if it passes.

If the House and Senate wanted to provide true protections, we would be working to complete action on the appropriations bills instead of playing this gargantuan shell game. If the

President wanted to do more than score political points in a rehashed re-tread of a stump speech, he would loose the bonds, he would cut the handcuffs from the House leadership and urge them to pass appropriations bills which contain critical homeland security funds that could provide real protection for our people, and provide it quickly.

Those dollars could make a difference today. Those dollars and the protections they would fund could save people's lives. We need not wait for a new Department to set up yet another huge bureaucracy. Instead, the House leadership is stuck in concrete. The appropriations bills may never see the light of day. There are 11 of them—11 of them—that have been reported from the Senate Appropriations Committee. They may never see the light of day, and the security of American people continues to be at risk.

How many tape recordings of Osama bin Laden do we need to hear before we start to take immediate action to protect ourselves in a meaningful way, not in a sham, sham legislative procedure that will produce another massive bill, massive shift of power, in a massive new bureaucracy? How many more threats do we need to hear? How many more threats need to be made?

Just in recent times, in recent hours the newspapers are reporting that U.S. intelligence officials believe that terrorist groups may be planning a new wave of attacks on Western targets. According to these reports, our intelligence agencies have detected a significant spike in intelligence chatter during the last 10 days that strongly indicate new assaults are being planned.

What more warning do we need? Do we have to wait until the chatter turns into screams of terror? Do we really believe this new Department of Homeland Security will provide the immediate protections that are so desperately needed? We are not only fooling ourselves, we are also jeopardizing the lives of the American people.

The new Department of Homeland Security will provide no immediate security—none. The legislation gives the President another year in which to put the pieces of this Department together. That is a year without any significant improvements to our Nation's protections. Maybe we should rename this the Department of Homeland Security Delay.

The appropriations bills, on the other hand, that are languishing in the other body controlled by the President's party would provide real security right now. All we have to do is just enact them.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of \$25.6 billion for homeland defense funding.

That is a lot of money, \$25.6 billion for homeland defense. That is real money for the real defense of our

homeland that could be available now, under our committee-reported bill, if the House Republican leadership on the other side of the Capitol could get White House permission to complete action on those appropriations bills. It could be done now.

The House is getting ready to leave town. They do not have to leave town. They could stay in town. We ought to pass those appropriations bills. That is money available now to protect lives and prevent future attacks. But under this constant stream of continuing resolutions, many homeland defense investments cannot take place.

The Commerce Justice State appropriations bill, the Treasury appropriations bill, the Agriculture appropriations bill, the VA/HUD appropriations bill, the Labor, Health and Human Services appropriations bill, these are fancy names that probably do not mean that much to anyone listening, but to the security and safety of the American people, these bills mean a whole lot more than a new letterhead on the same old Government stationery, which will come about as a result of the passage of this 484-page bill.

Instead, we are being told to create this new bureaucracy and put funding for homeland security on autopilot with a constant stream of continuing resolutions. It is an irresponsible path and one I hope Congress has the wisdom to avoid. The Senate's VA/HUD and Commerce Justice State appropriations bills provide more than \$3.5 billion for police officers, for firefighters, and for other first responders. That is \$3.5 billion that could be made available next week. All that has to be done is for the House to get the signal from the executive branch which controls the Republican leadership in the House. All that is needed is for the White House to unloose the shackles that are on the House leadership and say, pass that appropriations bill. We restored over \$1 billion of cuts the President proposed for State and local law enforcement programs. That is real safety, without any delay.

What is the administration's response? The administration says we are spending too much money on the security of the American people.

Mr. President, you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Labor, Health and Human Services appropriations bill provides \$3.8 billion to protect against biological and chemical weapons. We know that terrorists have them. We are fools if we do not invest in defenses against these weapons. The funds in these appropriations bills help to provide real savings now, without delay. You do not have to wait on passing a 484-page bill which cannot be implemented for another 12 months.

What is the President's response? Hold the line on the appropriations, he says. Hold the line. He has stopped the House Republican leadership from allowing these investments in homeland security to move forward.

Mr. President—I am talking to the President at the other end of the avenue—you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Agriculture appropriations bill includes more than \$150 million for the Food and Drug Administration to ensure our food supply is protected from terrorism and to accelerate the development and approval of medicines and tests to protect Americans from bioterrorism agents. This is a real saving. There is no delay here. Just pass the appropriations bill. We stand ready. But the administration has the handcuffs on the House leadership.

Apparently the administration thinks a safe food supply and vaccines to counter anthrax are too expensive. I say once again, a price tag cannot be placed on homeland security. You cannot protect lives on the cheap.

Take the Senate Commerce-Justice-State appropriations bill. It funds new FBI agents. The Treasury appropriations bill funds critical border security initiatives. These bills represent billions of dollars for homeland security. They help to provide real safety without delay, but regrettably the White House says no deal. According to this administration, the price is too high.

In my 50 years in Congress, if the Lord lets me live a few more days, this is the most cynical and potentially most devastating political game any administration has ever played. I am talking about administrations under Republican Presidents and under Democratic Presidents.

While funding battles are not uncommon and while many Congresses and administrations have not agreed on all the priorities, there has never been such a dispute that threatens the security of the American people. This administration would rather protect its political backside than the lives of this Nation's citizens. It is a calculated, cynical, manipulative, and irresponsible approach that I pray does not result in lost lives.

It disgusts me that the President has worked with the House Republican leadership to delay these appropriations bills. That is exactly what has happened. You mark my word. After the new year, when there is a new administration that takes over and this body goes under Republican control, as the other body will be under Republican control, you watch how fast those appropriations bill will pass. They will then pass, and this administration will be able to say; see now how things work under this new administration, how fast we get things done. I think that is the game we will see.

In fact, at the administration's urging, the House of Representatives has not considered a regular appropriations bill in 16 weeks. That is 4 months. And the White House machinations have not stopped at the regular appropriations bills. At the direction of the administration, \$8.9 billion for homeland

security investments were squeezed out of supplemental appropriations bills approved unanimously by the Senate Appropriations Committee, made up of 15 Democrats and 14 Republicans. If the President were serious about homeland security, we would do far more than simply pass a feel-good bill of 484 pages that creates a new department. We would pass these appropriations bills. We would train our first responders. We would provide them with equipment to carry out their mission of protecting the American people. We would put more agents on the borders. We would close the security loopholes in our ports. We would buy vaccines and increase our capacity to handle an attack using a biological weapon. We would invest in immediate homeland security initiatives and not rely on a campaign slogan to protect us 6 months or 1 year or even 5 years from now.

I hope we will not try to sell the American people this bill of goods on homeland security. It is nothing but snake oil. A new department would be welcome, but it will not be enough. We need to do much more and we need to do it quickly.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of \$25.6 billion for non-DOD homeland defense funding, an increase of \$5 billion over the levels approved last year. That is real money for the defense of our homeland that could be available now, under our committee-reported bills for fiscal year 2003, if the White House would but take off the shackles from the House Appropriations Committee and let it work, let it complete action on the bills in the regular manner.

This authorizing bill we are debating right now provides nothing immediately for homeland defense. It has a 12-month transition period built into it. It sounds good. It will make a good headline. But it does nothing immediately to increase the security of our country. The appropriations bills, on the other hand, would do something immediately. Right now, all we have to do is enact. That is real money for real protection.

Under the continuing resolution we are operating under now, the significant increases for homeland defense funding that we approved in our committee bills cannot take place. Let me give some examples of what will not be funded under the continuing resolution.

Under the continuing resolution, only \$651 million will be available for the Office of Domestic Preparedness to train and equip State and local law enforcement personnel to handle biological and chemical weapons, this compared to \$2 billion that would be available in the Senate Commerce-Justice-State appropriations bill. Crucial bioterrorism research will be postponed. The Senate Labor-HHS appropriations bill provided nearly \$1.5 billion for bio-

terrorism activities at the National Institutes of Health. This would fund research and infrastructure improvements necessary to develop countermeasures against smallpox, anthrax, and other deadly pathogens. Bioterrorism funding for NIH under a long-term continuing resolution would be limited to approximately \$107 million.

The fiscal year 2003 Senate bill contains a large increase for hospital preparedness funding. Why worry about local hospitals? Again, just today news accounts detail a warning from the FBI to hospitals in Houston, San Francisco, Chicago, and Washington, DC, that they may be targets of a terrorist threat perhaps from anthrax. That is getting close to home, Washington, DC. The \$593 million worth of grants in the Senate appropriations bill are necessary to make sure hospitals have the proper equipment, the staff, and the training to handle a bioterrorism attack. A long-term continuing resolution, however, would provide only \$129 million in fiscal year 2003 for this activity. In total, a long-term continuing resolution for the Labor-HHS bill would provide only \$1.8 billion for bioterrorism preparedness in fiscal year 2003. This is \$2 billion less than the committee-reported appropriations bill. What a difference.

Under the continuing resolution, only \$540 million would be available to local fire departments, from FEMA, for training and equipping firemen for weapons of mass destruction. For fiscal year 2003, the Senate committee VA-HUD appropriations bill provided a total of \$900 million for the fire grant program.

On September 11, 2001, in New York City, we learned that fire and police could not communicate by radio, undermining the response to those vicious terrorist attacks. This is a nationwide problem. We found that out as we conducted testimony on our appropriations bills earlier this year in hearings conducted by the Senate Appropriations Committee. We included \$180 million in the committee bill for grants for interoperable communications equipment for firefighters, none of which would be available under the continuing resolution. Under the continuing resolution, \$180 million that the committee approved for grants to upgrade State and local emergency operation centers would not be funded and \$75 million for grants to upgrade FEMA's 28 research and rescue teams would not be funded.

The Coast Guard is also one of the largest agencies to be included in the new Department of Homeland Security. The Coast Guard just signed the largest procurement contract in the history of the entire Department of Transportation, the so-called deep water capability replacement project. It is a comprehensive effort to modernize the Coast Guard's aging fleet of ships, planes, and helicopters so that the agency can better execute its homeland security and other missions.

Under the continuing resolution—that is what we will be operating under—the Coast Guard will have to start delaying the procurement of long-range aircraft as soon as December. In fact, due to the absence of adequate funding, the Coast Guard will have to start paying contract penalties totaling \$500,000 per month.

So at the same time as the Coast Guard is being merged into the new homeland security agency, the inadequate funding provided under the continuing resolution will mean the Coast Guard will delay the procurement of critical homeland security aircraft while simultaneously wasting half a million of the taxpayers' dollars every month on contract penalties.

The Senate committee Treasury-general government bill added \$18 million to the Customs Service for container security administration. This funding allows for inspection of shipping containers before they reach U.S. ports. Currently, only 2 percent of the containers that come into this country are inspected. Yet this funding will not be available under the continuing resolution.

The Senate committee energy and water bill includes \$64 million to provide for the security guards at critical Corps of Engineer infrastructure sites. Under a long-term continuing resolution, this funding would not be available. Pass the appropriations bill. There is the money. It is available.

This Congress faces a choice. Despite its myriad problems, we will likely pass this legislation to create a Department of Homeland Security. The President will make his speeches to try to convince the American people to feel good. My, we can feel good about this new Department we will have created. What the President will not tell the American people is that the shiny new Department will not be effective until far into the future. What he will not tell the American people is that in the interim, they—the American people—may be less safe rather than more safe because of the chaos and confusion inherent in massive Government reorganizations. What he will not tell the American people is that he continues—he, the President—to block investments that would help to protect the American people from terrorist attacks today.

If we truly want to protect our constituents, if we truly want to make a difference in our constituents' lives, we will provide the funds that are so critically needed. We will support the FBI. We will support the police officers. The funds will support our firefighters in our hometown. We will strengthen our border patrols and our port security. We will take steps to fight terrorism today. We will not wait until the station is ready at the new Department of Homeland Security. The price of continued delay is simply too great to fathom.

Mr. President:

The Moving Finger writes; and, having writ,

Moves on; nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.

So, Mr. President, tonight I am writing the record. I will not have that opportunity tomorrow because on tomorrow the Senate will vote to invoke cloture. I urge Senators not to do that, not to vote to invoke cloture tomorrow. Senators should give themselves more time, give their staffs more time to study these 484 pages in this new bill, this bill that has not seen a committee witness, this bill that has not been in a committee room, this bill that was unknown to the Members of this Senate 48 hours ago—a massive bill providing for a massive shift of power to the President of the United States. And once that power is shifted, Senators, remember, it is going to be very difficult to retrieve that power. Yet the legislative branch is just about to do that.

The executive branch never hesitates to stand up in defense of its prerogatives. The judicial branch never hesitates to stand up in defense of its prerogatives. But the same cannot be said of the legislative branch. Nearly always in the legislative branch, half of the branch is made up of supporters of the administration. If it were a monarchy, these would be supporters of the king. If it were in the days of the Revolution, they would be Tories. Half the legislative branch stands up in the defense of the king, in the defense of the executive branch. Only half, if that many, stand up in defense of the legislative branch. Yet we all in this legislative branch, whether we are members of the party that controls the administration or not, we stand before that desk up there and we lift our hand to Almighty God and we put a hand upon the Holy Bible and we swear an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Are we doing that? Are we supporting and defending this Constitution which provides for a balance of powers, a separation of powers, three departments equally balanced? Is that what we are supporting? That is what we swore to support. That is what we swore we would support. But not all of us are going to vote that way.

There are half of us in the two bodies, roughly speaking, who are always ready to run to the executive branch and uphold the executive branch against our own nest, against the legislative branch. I hope it will not be that way tomorrow. I hope that Senators will say whoa, whoa, whoa, just hold on here; let's just wait a little bit. Let's don't vote for cloture today. Let's have a few more days to debate this legislation, see what's in it, offer amendments to it, clean it up, protect the American people, their liberties and their rights. I call upon Senators to do that.

I have watched the Senate floor today. I have heard the assertion made that the Senate has been considering

the pending homeland security bill for 7 weeks now. Let's be clear about that. The Senate just received this homeland security bill, not 7 weeks ago but just the night before yesterday. We have had access to it for 36 to 48 hours, perhaps. The Senate did spend 7 weeks debating another homeland security bill, but that bill is no longer before the Senate. That bill is no longer before the Senate. All of those weeks of debate and amendments have been thrown out the window. In its place we are now debating a new bill, crafted in secret, crafted behind the shades and curtains of darkness; a new bill which many of us have not had the time to read because we just received it. I haven't had time to read it. I have only read parts of it. I haven't had time to read this bill.

We were not involved in drafting this bill. I had nothing to do with the drafting of that bill. It did not go through the committee process. There were no hearings, no markups. It was drafted, not unlike the President's plan, behind closed doors and hidden away from the eyes of the American public. So I must say I am a little distressed when I hear Senators saying that the Congress should pass this bill quickly because we have exhausted debate on it.

I grow even more distressed when I read in this morning's papers that a number of controversial provisions had been quietly inserted into this new bill in the hopes that no one would notice them before the bill passed.

Congress Daily reported this morning that provisions have been inserted into this bill to eliminate or reduce a manufacturer's product liability. Sure enough, title VIII of the new bill would authorize the new Homeland Security Secretary to provide manufacturers with liability protections for a broad range of items, from drugs to life preservers, in case such equipment malfunctions or does not work. According to the Democratic staff of the Governmental Affairs Committee, even if manufacturers sold equipment, technology, or drugs that they knew would not work as intended, the manufacturer could not be held liable for punitive damages unless he knowingly participated in the terrorist act giving rise to the injuries.

Do Senators know that? Do Senators know that this bill does just that? Exactly. Do Senators know that?

Congress Daily reports that limited liability protections already in place for vaccines would be expanded in this bill to include vaccine components such as the preservative Thimerosal, manufactured by Eli Lilly and Company. These drugs, I am informed, are already the subject of class action lawsuits by parents who claim the product's high mercury levels have caused their children's autism.

I have heard other Senators expressing dismay about these provisions that have been slipped into this bill. I have heard other Senators expressing puzzlement, dismay, consternation, surprise—to find such provisions, to find

this bill as it is. And yet we are being asked to invoke cloture tomorrow, invoke cloture so that we limit ourselves in future debate to 30 hours, a total of 30 hours on this bill.

The American people out there don't know this. The American people are being told that this is a great bill, this is a good bill, we are about to create a Department of Homeland Security and you will all be safer, ladies and gentlemen, out there in the hills and the prairies and the valleys and the mountains. You will all be safer.

The American people are being hoodwinked. We are complicitous in going along with the idea—going along with this sham. We are all guilty of going along with this. Yet we are going to invoke cloture on ourselves. We are going to invoke the gag rule.

We hear that this Senate is the greatest deliberative body in the world—greatest deliberative body in the world, the Senate of the United States. Yet we have been on this bill now parts of 2 days—just parts—and tomorrow morning we are going to put the gag rule on. We are going to invoke cloture so that we will deprive ourselves of the opportunity and we will deprive ourselves willingly of the opportunity to expose the weaknesses of this bill—to expose to the people who send us here, the judges of our political fortunes. We are going to say no to the people who send us here when we put this gag rule into effect and say to ourselves that we are not going to be interested in debating this longer than 30 hours, if that much time is used. We are saying to the American people who send us here we are putting the gag rule on you. We are putting the blindfold on you.

How many of us would like to go to the American people in the next campaign for reelection and tell them that we believe in blindfolding them, and we don't believe they should know what is in this bill. It has some good provisions, I am sure, but we are willing to shut ourselves off here.

This is a bad bill—bad because there are some provisions in it that are bad—not all but some provisions in it are bad. Some provisions we don't even know about. We intend to vote on it—pig in a poke, blindfold ourselves, gag ourselves. We are willing to do that.

Are we willing to draw our moneys, our salaries? The American people pay us to represent them, to protect them, to protect their liberties, to protect their Constitution. If the American people knew that there were certain provisions in here of which some Senators were just becoming aware, the American people would say to all of us: Hold up. Take a look at that bill. Don't you vote for that homeland security bill until you fully know what you are doing. They would say: Hold up here. Don't you come back to me asking for my vote again if you are going to vote to hoodwink the American people by shutting off debate so you can get out of there, so you can go home. We ought

to be right here. Here is where we ought to be until we know what is in this bill. We ought not pass this bill now. We ought to pass the appropriations bills that provide real homeland security for the American people.

So these drugs, as I say, are already the subject of class action lawsuits by parents who claim the products with high mercury levels have caused their children's autism. Is this what the President's homeland security proposal is really all about—exempting multi-billion-dollar pharmaceutical companies from lawsuits when the products they sell to the American public do not function properly or, even worse, injure or kill somebody—multibillion-dollar companies from lawsuits when the technological products they sell to the American people do not function properly? What is this? Is this a payoff for those companies for their contributions in the past election?

Yet another provision in the bill would require liability claims against smallpox vaccine manufacturers to go through the Federal tort system.

Let me say that again.

Yet another provision in the bill would require liability claims against smallpox vaccine manufacturers to go through the Federal tort system. The Federal Government would pay the damages. And punitive damages would be banned.

The new bill also would limit liabilities for airport screening companies and high-tech firms that develop equipment for domestic security. It would aid the airline industry by extending aviation war-risk insurance for a year, and giving airports another year to install baggage screening equipment.

I wonder how many Senators know that provision is in this bill.

According to the New York Times, the bill would reverse an earlier measure and allow American companies that have moved offshore in order to evade taxes to contract with the Homeland Security Department.

How about that? How many Senators know that? Let me say that again.

The bill would reverse an earlier measure and allow American companies that have moved offshore in order to evade taxes to contract with the Homeland Security Department.

These kinds of provisions underscore just how ridiculous this homeland security debate has become. Anyone who opposes this legislation will be labeled unpatriotic. You can count on that. The sting of that political attack is enough to allow gobs of complete and utter junk to be shoved in this bill and shoved through the Congress with lightning speed. The fear of being subjected to utterly vile campaign political attacks is allowing a slew of dangerous provisions—provisions that would never ever get through on their own—to be pushed along with hardly a glance. Just hold your nose, pinch it, and vote for cloture and vote for this bill. Go home feeling good. Oh, we passed some feel-good legislation.

Whoopee, great, hot diggedy dog. We passed a piece of feel-good legislation.

The American people should be afraid. The American people should be very afraid not only of Osama bin Laden and Saddam Hussein but of the monumental cynicism driven by this White House, and regrettably unopposed by this body.

Mr. President, I apologize to the Senate, to the staff, to the pages, all who work in this body—they work hard; they work long hours—for detaining you from going home early and getting an early supper. We call it supper down in West Virginia. Call it dinner, if you wish. We have kept you waiting, and I apologize for my part. Who else has done it? I am the one rascal here who has kept you waiting. I apologize for that.

Had we not been faced with a cloture vote tomorrow, I could have waited until tomorrow and said these things. But when else am I supposed to say it? If cloture is invoked tomorrow, I will have no opportunity to say it. Then we only have 30 hours—all of us, 100 Senators have 30 hours—and I suppose that is an hour each at most.

There is a record standing. There is a record that stands with him who holds the waters in his hands; there is a record that stands. That record will be written, and it will be there for the next thousand years for all who want to read it.

I believe the American people expect us to oppose this way of legislating. It is not as our children are being told the way to make laws.

Mr. President, I end my remarks, as I began them earlier today, by reading from 1st Corinthians, chapter 14, verse 8 and verse 9:

For if the trumpet give an uncertain sound, who shall prepare himself to the battle?

So likewise ye, except ye utter by the tongue words easy to be understood, how shall it be known what is spoken? For ye shall speak into the air.

Mr. President, that is the way I began my remarks. If we pass this bill, we are going to be the trumpet that gives forth an uncertain sound. The American people are going to be told, and they are going to believe, that they are made more safe, but we will have sent forth an uncertain sound. The people will not be made more safe by this piece of legislation.

The PRESIDING OFFICER. Senator from Alaska.

Mr. STEVENS. Mr. President, I have two short statements that I would like to make concerning this legislation. The first deals with the use of appropriated funds.

As my colleagues know, one of the major issues confronting Congress with respect to establishing the Department of Homeland Security was the extent to which the Homeland Secretary would be given the authority to transfer funds between appropriations accounts or among the organizations and programs within the new Department.

Underlying this issue are two critical questions—how best to give the Homeland Secretary the flexibility he or she needs to organize and operate the new Department, and how best to preserve the Congress's constitutional authority to appropriate funds and to oversee their use.

Previous versions of the Homeland Security Department legislation included extensive language governing how the Department would allocate and use appropriated funds and funds generated through property disposal or gifts from outside the Federal Government.

The compromise embodied in the final version of the Homeland Security Department legislation now before us takes a somewhat different approach, but the net effect is the same: Congress's appropriations authorities are maintained. Transferred funds must be used for the purposes for which they were appropriated, and Congress must approve, in advance, the reallocation of transferred funds away from their originally intended purposes.

Language added to the final bill reinforces the requirement that personnel, assets, and obligations transferred to the new Department shall be allocated in accordance with section 1531(a)(2) of title 31, United States Code. That section of permanent law requires that funds transferred within or between Executive branch agencies to finance transferred functions or activities must be used for a purpose for which the appropriation was originally available.

During the final negotiations on this bill, any language dealing directly with use of the general authority to transfer funds was dropped, since it is an authorization act. That authority will be included in the continuing resolution that I hope we will pass to keep the Federal Government functioning after we adjourn or recess this year. Since virtually every annual appropriations act includes general transfer authority language, the negotiators agreed that it was more consistent and effective to include the new Department's transfer authority in an appropriations act. The continuing resolution is our first appropriations opportunity to accomplish this objective. I intend to see to it that it will be in the resolution if at all possible, and I believe it is already agreed to.

The negotiators did retain in the authorization bill the language regarding property disposal and gifts. The language also requires that the new Department submit a detailed budget request annually beginning with fiscal year 2004. That will be the request we receive next year.

The continuing resolution language provides general transfer authority of \$500 million for fiscal year 2003 and the same amount in fiscal year 2004. It stipulates that this authority may not be used unless for higher priority items, based on unforeseen homeland security requirements, than those for

which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress. The language provides an additional \$140 million in transfer authority for fiscal year 2003 for the salaries and expenses associated with the initiation of the Department.

The appropriations language further requires that the Senate and House Committees on Appropriations receive 15 days' advance notice before any funding transfer is made, and it establishes that the new Department will submit formal reprogramming requests to these committees for any proposed funding transfer. The language further stipulates that, of the total amount of transfer authority provided, and except as otherwise specifically authorized by law, not to exceed two percent of any appropriations available to the Homeland Secretary may be transferred between appropriations. I am satisfied those meet our general requirements, although they are not in the original request I made in the Governmental Affairs Committee on which I serve.

In many respects, these provisions mirror language that is included annually in every Department of Defense Appropriations Act. In addition, use of transfer authority would be subject to approval or disapproval in writing by the Committees on Appropriations, which would review reprogramming requests submitted and considered under established procedures based on the reprogramming procedures used by the Defense Department and Congress for defense transfer authority actions. We intend to mirror the procedure that has been used so successfully with regard to defense matters when we are reviewing national security matters.

Finally, the authorization bill includes a provision intended to help Congress to assess the long-term funding requirements for the new Department. That provision requires annual submission of a Future Years Homeland Security Program that projects spending requirements for at least five fiscal years. This detailed, multi-year document is due beginning with the fiscal year 2005 budget request.

The final authorization language, and the language in the continuing resolution, preserve the statutory and administrative requirements needed to ensure that any funds made available to the new Department are used effectively and efficiently and according to the will of the people as reflected through their elected Senators and Representatives.

This language, and the annual appropriations process, ensure that the Homeland Security has the appropriate authorities to organize and operate the new Department, and that Congress will remain directly engaged in deciding how appropriated funds are used, or reallocated, by the Executive branch.

In so doing, I believe, and it has been my intent working with the distinguished chairman, that this language preserves Congress's Constitutional

and rightful role in our government—a role that the Founding Fathers intended and that our constituents demand. Our constitutional oath requires Members to assure that our constituents' demand for our oversight will be fulfilled.

I have a second short statement. I have been very interested in preserving the Coast Guard's non-homeland security mission performance under this bill. I will discuss for the Senate today a vitally important section of the homeland security legislation that we consider here.

This section—Section 888—is entitled "Preserving Coast Guard Mission Importance," and its implementation is essential to maintaining without significant reduction the Coast Guard's non-homeland security capabilities and missions.

We all recognize the critical homeland security missions the Coast Guard performs. However, it is just as critical to the United States that the Coast Guard effectively and successfully accomplish its non-homeland security missions. The criticality of these non-homeland security missions extends far beyond the 30 coastal and Great Lake states. These non-homeland security missions affect the maritime safety, law enforcement, environmental conditions, and economic security of our entire nation.

The Coast Guard's non-homeland security missions are marine safety, search and rescue, aids to navigation, living marine resources—including fisheries law enforcement, marine environmental protection, and ice operations.

All these missions are critical to the well-being of Alaskans, and we rely on the Coast Guard virtually every day for protection and assistance in these mission areas. I am confident that my colleagues who also will speak on this section of the bill will attest further to the importance to their states and to the rest of the nation of preserving the Coast Guard's vital non-homeland security capabilities and missions.

Preserving these missions and capabilities is the fundamental intent and purpose of Section 888.

The Coast Guard cannot accomplish its non-homeland security missions effectively and successfully unless its current capabilities in these areas are preserved intact and without significant reduction. Section 888 mandates the preservation of these capabilities, and of the Coast Guard's authorities and functions in these areas, unless Congress specifies otherwise in subsequent acts.

I would add at this point that, since September 11, 2001, the Coast Guard has assumed greatly expanded homeland security responsibilities without seeing a reduction in its non-homeland security requirements. This is a strong justification for allocating even more total resources to the Coast Guard on an annual and long-term basis.

Section 888 further reinforces and protects the Coast Guard's non-homeland security missions and capabilities by preventing the diversion of any mission, function, or asset—including ships, aircraft, and helicopters—to the principal and continuing use of any other organization, unit, or entity of the Homeland Security Department. This restriction is intended to minimize, if not eliminate, any prospect of the diversion from the Coast Guard of the personnel, equipment or other resources needed to perform its non-homeland security missions. Personnel details or assignments that do not reduce the Coast Guard's capability to perform these missions are permitted.

Section 888 further prohibits the Homeland Secretary from reducing the Coast Guard's non-homeland security missions and capabilities substantially or significantly unless Congress specifies otherwise in subsequent Acts.

The Homeland Security Secretary may waive this restriction for no more than 90 days, but he or she must first declare and certify to Congress that a clear, compelling, and immediate need exists for such a waiver.

If he or she exercises the waiver authority, the Homeland Secretary must submit to Congress a detailed justification. Thus, the elected Senators and Representatives of the American people will have an opportunity to determine whether they agree or disagree with the waiver. We will have the opportunity to assess the impact of such a waiver on the Coast Guard's non-homeland security missions and to make our views known should there be any cause for concerns.

The language in Section 888 does provide more flexibility than the Coast Guard-related language in the earlier versions of the Homeland Security Department bills that we have been debating since July. However, this latest language still will protect the Coast Guard from any major changes to its non-homeland security missions and capabilities because it clearly does not provide the authority to make wholesale and sweeping changes in these areas.

This final language also includes other important provisions that will contribute to the Coast Guard's overall well-being and effectiveness as part of the new Homeland Security Department, as well as help preserve its non-homeland security missions and capabilities. These provisions have been carried over from at least one of the previous versions of the legislation, or they have been crafted to further enhance the Coast Guard's position in the new Department.

These provisions include language transferring the Coast Guard to the new Department as a freestanding and distinct entity that is not under the jurisdiction of any of the Department's new directorates, and language ensuring that the Service's Commandant shall report directly to the Homeland Secretary without being required to re-

port through any other departmental official.

Take separately and together, these subsections strengthen the institutional position of the Coast Guard and the Commandant within the Department, thus enhancing the Service's ability to compete for resources and to influence policy in both the non-homeland security and homeland security areas. They are an unambiguous statement by the Congress about the importance of the Coast Guard and all its missions within the Department.

Another subsection requires the new Department's Inspector General to report annually to Congress on the mission performance of the Coast Guard, with a particular emphasis on the non-homeland security missions. This information should help Congress identify whether additional actions are needed to preserve these non-homeland security missions and capabilities.

The Homeland Secretary also is required by another subsection to report to Congress not later than 90 days after enactment of the Act on whether the procurement rate in the Service's top-priority modernization program—the integrated deepwater system—can be accelerated by 10 years. Timely implementation of the Deepwater program is essential to maintaining and improving the Coast Guard's capabilities to accomplish all its missions. Congress should consider whether accelerating the program is an affordable and cost-effective way to accomplish these objectives, especially in the non-homeland security area.

A final subsection ensures that the conditions and restrictions in Section 888 shall not apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States code. It would be inappropriate to apply these conditions and restrictions under such circumstances. Under section 3 of title 14, the Coast Guard becomes part of the Navy in Wartime or as directed by the President.

In summary, Section 888 resulted from productive negotiations with the White House and our House colleagues during which all sides strived to make reasonable compromises that would enable Congress to pass a final version of the Homeland Security Department legislation during this post-election session. Refinements suggested by the Coast Guard also are included in the language.

The language maintains the structural and operational integrity of the Coast Guard, the authority of the Commandant, the non-homeland security missions of the Coast Guard, and the Service's capabilities to carry out these missions even as it is transferred to the new Department. The language is clearly intended to assure that the important homeland security priorities of the new Department will not eclipse the Coast Guard's crucial non-homeland security missions and capabilities.

Section 888 strikes the right balance at this time between maintaining the

Coast Guard's vital non-homeland security missions and capabilities and permitting it to carry out important homeland security responsibilities.

Just as importantly, this language and the annual appropriations process, ensure that Congress will remain directly engaged in deciding the extent to which any significant changes occur in the future to the Coast Guard's non-homeland security missions and capabilities. Congress's continued and direct engagement in such matters is essential given the importance to the American people of these missions and capabilities.

And again, these missions and capabilities are vital to my State of Alaska.

I thank my distinguished friend for allowing me to make these two statements. I am late to a meeting. I wanted to make sure we explained to the Senate what we have done in modifying this bill.

I know it does not meet totally the requirements and approval of my friend from West Virginia. But I do think, under the circumstances, that we will have this continued role of supervision and we will retain the same type of control over reprogrammings of the new Homeland Security Department that we have over the Department of Defense. We should be able to continue in the future the same kind of Congressional connection to the changes in the use of funds—and there will be changes, based on changing priorities, changing circumstances—and we are part of that process. It will not be done without the prior approval of Congress.

I think I can assure my friend, in my judgment, we have preserved to the maximum extent possible our constitutional role in this process as it goes forward. There is no question every appropriations bill annually will address this issue and we will address it as we have in connection with defense matters in the past.

I thank my friend from West Virginia.

Mr. BYRD. Mr. President, the distinguished Senator is welcome. I appreciate what he has said. I hope the Senator's assurances—I know they are sincerely given—will prove to be direct and true. I must say I have great concerns about this legislation as it is written as to the verbiage that we find in this new package that is on our desks today. It made its appearance yesterday. I hope the distinguished Senator from Alaska is accurate and that he is correct, and that the assurances which he has been given and which he is giving will prove to be the case.

I have a great deal of confidence in my friend from Alaska. I have implicit confidence in him. I have never had that confidence shaken. But that confidence I have in him does not extend beyond him, I have to say truthfully, to the people in this administration. But I do trust my friend and I know he will try to his level best to see to it that the administration deals fairly

and squarely with us in the appropriations process.

With that, I again thank him.

Mr. STEVENS. Mr. President, if the Senator will yield—

Mr. BYRD. Yes, I yield.

Mr. STEVENS. I give the Senator my assurance we will continue to work together to assure we maintain our constitutional role in the activities of this new Department. But I also feel it is absolutely necessary that this bill be passed this year because if it is not, regardless of the size of the bill, it will literally die at the end of December and we will have to start all over again. With the tensions facing the world and challenges our Government faces to maintain homeland security, it is absolutely essential we start forward. We have a slight disagreement on that. But I do believe this bill gives us a framework to work with this subject.

I think the ongoing responsibility to assure the new Department will continue to be effective will primarily rest with the appropriations process. This will be an enormous demand, a new demand on our Treasury, to fund a wholly new type of homeland security.

We are consolidating a whole series of agencies, hopefully bringing about some new efficiencies. But it will require increased money.

Senator BYRD and I have, will continue to have, the role of seeing to it the Senate's operations with regard to the appropriations process are fully understood by the new homeland security department and its personnel, and that we will work effectively to see to it we fulfill our constitutional responsibility with regard to control of the people's money.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have never seen anything in the demeanor of the distinguished Senator from Alaska, anything in his words, anything in his daily activities, the record he has made here, that would create any doubt, as far as I am concerned, in him and his intention to carry this out. I have to say I don't have the same kind of confidence in the people at the other end of the avenue. I think we are making a huge mistake in passing this bill at this time.

I think the appropriations the distinguished Senator from Alaska and I have worked together in making possible, along with the other members of our committee—I think those appropriations, which have not been signed into law by the President, some of which have not passed the other body, and most of which have been held in check by the other body at the behest of the administration—those would have given to the American people far more security than would this bill. But as to the Senator, my trust in him—as I said it before and I will say it again—is implicit. I have no doubt he intends to do the best he can to see this appropriations process goes along as the Framers and as our predecessors have intended.

Mr. STEVENS. I thank the Senator.

Mr. AKAKA. Mr. President, I rise to discuss the critical distinctions between the legislation as reported out by the Governmental Affairs Committee and the House passed bill, creating a Department of Homeland Security.

I think it is wise to proceed cautiously when creating a mega-Department of Homeland Security which would encompass approximately 22 agencies and involve about 170,000 employees. We all recognize that we face new threats, and we all recognize the need to better coordinate efforts to protect Americans from these threats. However, it is also critically important, as the distinguished senior Senator from West Virginia has repeatedly noted, to consider carefully what is being proposed to ensure that any legislation enhances our security and does not detract from it.

William Safire describes in Thursday's New York Times how the House proposed Homeland Security Act will create a computerized dossier on the private life of every American citizen. I urge my colleagues to read Mr. Safire's prescient column entitled, "You Are a Suspect". His arguments are one reason why we should proceed cautiously to creating a Department of Homeland Security.

The President compares the reorganization of agencies within the federal government into a new Department of Homeland Security to the creation of the Department of Defense after World War II. But the two departments that were combined to create the Department of Defense, the Department of the Army and the Department of the Navy, had the same primary mission, to defend the United States. They had similar cultures and management priorities. This is not true of the proposed new Department of Homeland Security. Many of the agencies, such as the Coast Guard, the Immigration and Naturalization Service, and the Federal Emergency Management Agency, have varying missions, priorities and cultures.

Any far-reaching change to the structure of the federal government demands thorough and open discussion. Senator LIEBERMAN has done a great service to his country by holding hearings and debating extensively the structure of such a department. But there needs to be further debate and amendment to the proposal offered by the Republicans.

Let me make a dozen points as to why the legislation reported out by our Governmental Affairs Committee, which was subjected to numerous public hearings, represents an improvement over legislation passed by the House last night and why the House proposal, supported by the President, is seriously flawed.

First, the House proposal raises serious concerns about the collection, use, and dissemination of private information, the issue addressed by Mr. Safire.

It gives the Secretary broad access to information relating to investigations and places restrictions on the authority of the inspector general to conduct inquiries into the new department's operations. Our committee substitute corrected this oversight by creating both a strong Civil Rights Officer and a strong Chief Privacy Officer.

The privacy officer would assist the Department with the development and implementation of policies and procedures to ensure that privacy considerations and safeguards are incorporated and implemented in programs and activities, and that information is handled in a manner that minimizes the risks of harm to individuals from inappropriate disclosure. Such officers are necessary to protect Americans from encroachments on their civil liberties.

The committee-reported legislation created a powerful civil rights officer, ensuring compliance with all civil rights laws, coordinating with the administration, assisting in the development and implementation of civil rights policies, and reporting to the Inspector General on matters warranting further investigation. In contrast, the new bill just passed by the House would only require the Civil Rights Officer to review and assess alleged abuses and report to Congress. In the House bill the Secretary appoints the officer and in the Governmental Affairs committee-reported bill the President appoints and the Senate confirms the officer, ensuring greater accountability. The Committee alternative worked to ensure that civil rights were not violated in the first instance.

The threat of a "Big Brother" new department cannot be overemphasized. With the President proposing programs like the Terrorism Information and Prevention System, Operation TIPS, a national program to encourage volunteers to report suspect activities to the Department of Justice, and the Department of Defense's new "Total Information Awareness," we need strong protections against violations of Americans' privacy and civil rights. The first defense of our freedom comes from a system with checks and balances. The House proposal, supported by the President, does not contain sufficient checks and balances.

Second, under the first House-passed bill and the President's original proposal, whistleblowers were not protected. Merit Systems Protection Board, MSPB, appeal rights as well as Office of Special Counsel, OSC, enforcement were not included. I am pleased to say that under the proposal before us today, whistleblowers retain most of their rights. However, the bill does not go far enough. Due to the waiver of collective bargaining rights, third-party arbitration may not be protected for those federal employees who are union members and blow the whistle. Third party arbitration is an effective way to resolve whistle blower cases due to the hostile decisions of the Federal Circuit.

Third, the administration proposal transfers the Transportation Security

Agency, TSA, into the new department. Baggage screeners are our first line of defense against terrorism on our airlines, and they need to have the same protections as our border patrol agents, INS employees, and custom inspectors so that they can come forward to disclose risks to our public health and safety. The committee's bill, as a result of an amendment offered by Senator LEVIN and myself, gave full whistleblower rights to baggage screeners and their supervisors and to contract screeners. This is something that the House proposal fails to do.

Fourth, the new administration-supported bill gives minimal assurances that non-homeland security functions in the 22 agencies to be absorbed in the new Department will be preserved and not eliminated or diminished. The committee's amendment, which I offered with Senator CARPER, required that all non-homeland security functions of each agency be identified, along with the resources needed to preserve these functions, and the additional changes needed to ensure that non-homeland security functions would not be diminished. The new proposal drops this critical reporting requirement. In fact, the new bill removes all reports to Congress which would allow Congress to monitor closely the creation of the new department and to ensure vital non-homeland security functions are preserved.

Fifth, the committee-reported bill provided critical management guidance to the development of an effective homeland security mission. Agencies need specific guidance on how to achieve success. There are over 40 federal agencies with homeland security missions—some to be within the new department but others to remain outside. For many, homeland security is a new responsibility that must be added to existing missions. Agencies will need to rationalize their new homeland security missions with their existing responsibilities. The committee's amendment provided for a process for ensuring that this occurs. The House proposal does not.

Sixth, the House-passed bill creates a new Under Secretary for Information Analysis and Infrastructure Protection with two subordinate directorates, including one for intelligence which is given extraordinary access to sensitive information, both domestic and foreign. Under the House formulation as supported by the President, the new Secretary can trump the authority of the Director of Central Intelligence. The new directorate will duplicate work already being performed by the CIA's Counter Terrorism Center. Furthermore, Section 202 of the President's bill requires all agencies to provide all information to the new Department, including information which might pertain to intelligence sources and methods, without the Secretary even having to request that information. This gives this new office unprecedented access with few checks and

balances, suggesting that the new office may have the capability to intrude to an extraordinary extent into the private lives of individual American citizens. These are very worrisome developments. The new formulation risks endangering our individual, as well as our national, security. Senator THOMPSON, Senator LIEBERMAN, Senator LEVIN and I had worked out an amendment which was contained in the committee bill. This amendment should have been accepted by the President. I am deeply troubled concerning the administration's new mission for the Department's intelligence directorate.

Seventh, the latest proposal does not address the serious shortcomings across the Federal Government in communicating security threats to the public. The American people are confused and frustrated by threat advisories without direction and repeated statements by the administration that future terrorist attacks are inevitable. The committee bill ensured that the Secretary of the new Department worked with state and local officials to develop more effective alert systems, more useful warnings, and improved communication with the public and private sector. In short, the Governmental Affairs Committee's legislation would have empowered the American people to play a role in the war on terrorism.

Eighth, this new proposal transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security. However, many potential agriculture terrorism diseases, such as anthrax, are not studied at Plum Island. Rather than pulling off one piece of the Department of Agriculture's much needed and underappreciated laboratory network, the Governmental Affairs Committee alternative left Plum Island where it was and instead ensured coordination and consultation between the Department of Homeland Security and Agriculture on bioterrorism research priorities.

Ninth, the House proposal does not address serious shortfalls in emergency preparedness and response capabilities for agricultural terrorism. The Lieberman alternative acknowledged the importance of agriculture to our national economy and the dangers that an infectious animal or plant disease could pose to human health, rural America, and our Nation's economy. A large scale agricultural disease outbreak, whether of natural or deliberate origin, will require rapid and coordinated efforts by the Department of Agriculture, the Federal Emergency Management Agency, the Environmental Protection Agency, the Departments of Health and Human Services, Transportation, Defense, and Justice, and local and State emergency managers. The committee's amendment ensured that agricultural health diseases were considered in security assessments and that the animal health and agriculture

communities would be included in planning, training, and response activities.

Tenth, in the name of flexibility, the President's initial proposal waived all of the provisions of title 5 leaving federal employees without protection from discrimination or whistleblower retaliations. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining rights and appeal rights. One of the key factors to the so-called success of the Federal Aviation Administration, FAA, and the Internal Revenue Service, IRS, two agencies that have managerial flexibilities, is the strong role federal labor unions play in the shaping of the personnel system and in resolving employee disputes through third-party arbitration. This third-party arbitration is even more critical since cases involving coercion to participate in political activity, violations of veterans preference rights, giving unlawful preference or advantage to any employee, or other prohibited personnel practices can no longer be appealed to an independent body such as the Merit Systems Protection Board, MSPB. The personnel system at the FAA removed MSPB appeal rights in 1996 only to have them reinstated by Congress in 2000 at the urging of Federal employees and managers.

While the merit system principles are designed to ensure that Federal employment is efficient, fair, open to all, and free from political interference, the civil service rules of title 5, reinforced by collective bargaining rights, provide the framework for implementing and enforcing merit principles. Without such laws in place, the principles we all strive for cannot be reached. The Governmental Affairs Committee's reported bill preserved all of title 5, protected collective bargaining rights, and provided additional flexibilities governmentwide.

Some 25 years ago, the Civil Service Reform Act, CSRA, of 1978 responded to the same issues confronting our Government today. The act established the principles of openness and procedural justice that define the civil service today. It created the Merit Systems Protection Board and the Office of Special Counsel to protect the rights of Federal employees. The Federal Labor Relations Authority was created to oversee labor-management practices. The act provided a statutory basis for the collective bargaining rights of Federal workers. It prohibited reprisals against employees who expose government fraud, waste and abuse. Those in the Federal workforce demonstrate their loyalty and dedication not just to their employer but to their country every day. On September 11, the Federal workforce responded with courage, dedication, and sacrifice. Why is the President repaying their sacrifice by undermining their rights and our civil service by proposing these changes?

Eleventh, the House legislation fails to protect veterans by allowing the

waiver of chapter 77 of title 5 relating to appeals. This would make veterans go to an agency management-operated process to challenge anti-veteran personnel actions by the same agency management. Under current law, veterans who believe that they have been denied a position or have been subject to a "designer" Reduction-In-Force, RIF, action in violation of veterans' preference requirements can challenge such wrongful actions through the Merit Systems Protection Board or through a union grievance procedure. This will no longer be possible under the House bill. The Committee's bill would have preserved MSPB review of veterans' preference complaints. Ironically, as we are in the midst of a war on terrorism and have authorized a war against Iraq, the Administration is weakening veterans' preference rights. This is fundamentally wrong.

Twelfth, the House proposal and the Governmental Affairs Committee-reported bill include provisions protecting the confidential sharing of critical infrastructure information. With cyber attacks on the rise, government and industry leaders have been seeking a way to facilitate the sharing of information related to cyber vulnerabilities and attacks. Sharing such information is important because 85 percent of the Nation's infrastructure is controlled by private utility, telecommunications, or other similar companies. Despite the need to facilitate information sharing, I question the extent to which such information will be protected and the impact of such protections on environmental and public health laws.

In general, the owners and operators of critical infrastructure are concerned about the type and scope of information they are being asked to submit to the government. This data deals with vulnerabilities, incidents, and remedies which, if made available to business competitors or to the general public, could compromise their competitive position, expose them to liability, disclose sensitive information to terrorists and others who might wish to disrupt the function of their infrastructure, or harm their public relations.

However, current law provides adequate protection to the private sector for disclosing this type of information to the Federal Government. Nonetheless, industry has expressed its concern over non-binding case law that could be overturned. As such, the Governmental Affairs Committee bill provided a narrow exception to the Freedom of Information Act which closely follows current law. This provision was designed to facilitate the sharing of information with the Federal Government, while at the same time providing citizens with necessary information on public health and environmental issues. The Committee bill was careful not to provide an inadvertent safe harbor for those who violate Federal health and safety statutes.

For these reasons, I believe that the Governmental Affairs Committee's legis-

lation offered a more effective approach to guarding homeland security than the proposal advocated by the President who recently stated that "our job—our government's greatest responsibility is to protect the American people. "I agree with the President, but I do not agree that by voting for the President's flawed proposal we will be adequately protecting the American people.

Mr. JEFFORDS. Mr. President, I would like to commend Senator CORZINE for his efforts to address the serious issue of chemical site security. The Chemical Security Act, S. 1602, which I cosponsored, would require "high priority" facilities to improve security and reduce hazards. The bipartisan and strong support for this issue was demonstrated last July when the bill unanimously passed the Senate Environment and Public Works Committee.

Across the country, thousands of industrial facilities use dangerous chemicals in amounts that could endanger nearby communities if the facilities were attacked by terrorists. According to the Environmental Protection Agency's Risk Management Planning program, there are 123 facilities where a release of chemicals could threaten more than 1 million people. There are also more than 700 facilities from which a chemical release could threaten more than 100,000 residential neighbors. Yet there is no Federal security standard for chemical facilities, no Federal guidelines on facility proximity to neighboring communities, and no Federal agency overseeing the operations and safety of these facilities.

This bill is not intended to address chemical accidents. The Clean Air Act already provides existing authority. However, a review of the chemical accident data provides clear insight into the dangers associated with chemical releases from these facilities. Federal data suggests that in 1998 there were almost 50,000 incidents—fires, spills and explosions—over 100 deaths, and nearly 5,000 injuries, related to chemical industrial accidents in the United States. Some analysts suggest that for each catastrophic chemical accident that causes a fatality, there are 300 recordable incidents and 30,000 near misses. One estimate suggests that U.S. chemical accidents cost about \$15 billion a year.

In 1999, Congress required the Department of Justice to issue, within 3 years, a report to Congress on the vulnerability of chemical facilities to criminal and terrorist activity. For over a year, the Senate Environment and Public Works Committee has been asking for this report. Beyond a very thin and useless preliminary draft, the administration has not complied with this requirement of the Clean Air Act amendments. The Justice Department claims that funding constraints have impacted their work. This excuse is completely unacceptable, as is the administration's delay in addressing

what may be this Nation's biggest terrorist vulnerability. Three years ago, Congress recognized the potential risks to our Nation's chemical security. Not 1 more year or month should pass with this issue unresolved.

Press reports highlight the public's frustration. In September, Newsweek reported a failing grade to the Federal Government in protecting chemical plants and other hazardous materials. I believe the article accurately described the forces blocking action: "industry lobbyists and infighting among a multitude of government agencies trying to defend their turf have combined to hold (Governor) Ridge's office and the Environmental Protection Agency at bay."

I ask my colleague to step beyond bureaucratic delays and special interest pressures to think of the families that could be impacted by our inaction here today. We must act on this issue as soon as possible.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SCHUMER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I extend my appreciation to the Senator from Iowa who has other things to do, but he has agreed to be here for a few minutes.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 788, 789, 851, 911, 922, 926, 1031, 1032, 1033, 1034, 1071 through 1135, 1147 through 1176; and all nominations placed on the Secretary's desk. I further ask that the nominations be confirmed en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and any statements be printed in the appropriate place in the RECORD, and the Senate then resume legislative session, with the preceding all occurring with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NATIONAL LABOR RELATIONS BOARD

Rene Acosta, of Virginia, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 2003.

Dennis P. Walsh, of Maryland, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2004.

DEPARTMENT OF ENERGY

Kyle E. McSlarrow, of Virginia, to be Deputy Secretary of Energy.